

ATTACHMENT #2

ORDINANCE NO. 98- 23

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, AMENDING CHAPTER 9, ARTICLE II OF PALM BEACH COUNTY CODE, RELATING TO EMERGENCY MANAGEMENT DURING NATURAL OR MAN-MADE DISASTERS, KNOWN AS THE PALM BEACH COUNTY EMERGENCY MANAGEMENT ORDINANCE (ORDINANCE NO. 92-37); PROVIDING FOR AMENDMENT OF DEFINITIONS; AMENDING PROVISION FOR PROHIBITION ON PRICE GOUGING; AMENDING PROVISION FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR PENALTY; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Chapter 125 (County Government) authorizes the Board of County Commissioners of Palm Beach County to enact such ordinances as are necessary to protect the health, safety and welfare of the citizens of Palm Beach County; and

WHEREAS, Palm Beach County residents face the imposition or demand of excessive and/or exorbitant prices for consumer goods, services and lodging essential for their health, safety and welfare after the occurrence of natural or manmade disasters and emergencies; and

WHEREAS, Florida Statute, Chapter 252.38(3)(a)5(1997) and Palm Beach County Resolution Number R-89-384 provides authority for Palm Beach County to declare a state of local emergency and to waive the procedures and formalities otherwise required of Palm Beach County by law in order to take whatever action is necessary to ensure the health, safety and welfare of its citizens; and

WHEREAS, Florida Statute, Chapter 252 and Palm Beach County Resolution Number R-89-2127 identifies the Director of the Division of Emergency Management, Department of

ORDINANCE NO.

Public Safety, as the coordinator for services, activities and programs required in the event of an emergency; and

WHEREAS, Part II of Chapter 501, Florida Statutes (1991), the "Florida Deceptive and Unfair Trade Practices Act," prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, and authorizes local governments to enact consistent consumer protection ordinances; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds and declares that it is necessary to protect the health, safety and welfare of the citizens of Palm Beach County from unscrupulous vendors or merchants taking advantage of the scarcity of consumer goods, including the addition of services, rentals or lodging as a prohibited practice, during a period of emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1.

Section 9-34, Definitions, subsections (a), (c), and (e) of Chapter 9, Article II of the Palm Beach County Code are hereby amended to read:

(a) Average Retail Price: The term "average retail price" shall mean the average price at which similar merchandise, services, rentals or lodging were ~~was~~ being sold or rented during the thirty days immediately preceding the declaration of a local emergency.

(c) Consumer Good: The term "consumer good" shall mean any service, article, product, merchandise, or commodity of any kind or class, which is customarily

produced or distributed for sale or rental at retail or provided for consumption by or the use or benefit of individuals, including but not limited to foods; water; ice; clothing; lumber, hardware, chainsaws, generators, and home improvement materials; fuel products; and repairs, services, rentals or lodging.

(e) Enforcement Official. The term "enforcement official" shall mean any police or law enforcement officer, any code compliance official, the personnel of the Department of Public Safety, Division of Emergency Management and the Division of Consumer Affairs, and any other appropriate municipal or county official.

## Section 2.

Section 9-36. Prohibition on Price Gouging, subsections (a), (c) and (d), of Chapter 9, Article II of the Palm Beach County Code are hereby amended to read:

### Section 9-36. Prohibition on Price Gouging.

(a) Upon declaration of an emergency pursuant to Section 9-35 of this Code, and during the duration of such emergency, it shall be prima facie evidence that an unlawful method of competition and an unfair and deceptive trade act or practice has occurred if ~~for~~ any individual or business entity doing business in Palm Beach County ~~to~~ charges more than the average retail price for any consumer good and such price exceeds the average price at which the same or similar consumer good was readily obtainable in Palm Beach County during the thirty days immediately prior to a declaration of a state of emergency; or the charges represent a gross disparity between the price of the consumer good or dwelling



unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or for a person or his agent or business entity or its employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any consumer good including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

(c) A price increase approved by an appropriate government agency shall not be in violation of this Ordinance.

(d) This Ordinance shall not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

### Section 3.

Section 9-37, Enforcement, Subsection 2, of Chapter 9, Article II of the Palm Beach County Code is hereby amended to read:

(a) The County Court shall have jurisdiction over all civil citations issued for violations of this article.

(b) This Ordinance shall also be enforced by personnel of the Department of Public Safety, the Emergency Management Division, Consumer Affairs Division, county and municipal code enforcement officials, the police agencies of the various municipalities in Palm Beach County and by the Palm Beach County Sheriff's Office. When specifically authorized by the Director, Department of Public Safety, this Ordinance may be enforced by other Palm Beach County personnel.

(c) The Consumer Affairs Division shall maintain a system by which violators are given written notice of all violations. The County Clerk shall accept designated fines and issue receipts therefor.

(d) The personnel authorized to enforce the provisions of this Ordinance shall issue civil citations for fines not to exceed two hundred fifty dollars (\$250.00) for the first violation and five hundred dollars (\$500.00) for each additional violation. Each incident of a continuing violation shall be deemed a separate additional violation.

(e) Payment shall be made, either by mail or in person, to the Violations Bureau within the time specified upon the citation. If such person follows this procedure, he shall be deemed to have admitted to the infraction and to have waived his right to a hearing on the issue of the commission of the infraction.

(f) All fines collected as a result of said citations shall be paid into the County Treasury and

deposited in the Fine and Forfeiture Fund.

(g) Any person who fails to make payment within the time period specified on the citation shall be deemed to have waived his right to pay the civil penalty as set forth in the citation and shall appear before the County Court.

(h) Any person who elects to appear before the court to contest the citation shall be deemed to waive his right to pay the civil penalty. The court, after a hearing, shall make a finding as to whether a violation has occurred and may impose a civil penalty not to exceed \$500.00 plus court costs.

(i) If a person fails to pay the civil penalty or fails to appear in court to contest the citation, he shall be deemed to have waived his right to contest the citation and, in such case, a default judgment shall be entered and the judge shall impose a fine at that time. If the fine is paid, the case shall be dismissed. If the fine is not paid, judgment may be entered up to the maximum civil penalty of \$500.00 plus court costs.

(j) Any person who refuses to sign and accept a citation issued pursuant to this Ordinance shall be guilty of a misdemeanor of the second degree, punishable as provided by Section 775.082, 775.083, 775.084, Florida Statutes.

~~(a)~~(k) Failure to comply with the requirements of this Ordinance shall also constitute a violation of County Ordinance, including the Consumer Affairs Ordinance of Palm Beach County (No. 77-10, as amended), and upon conviction, shall be deemed a misdemeanor of the second degree and shall



be punishable by a fine not to exceed five hundred dollars (\$500.00) per violation, or imprisonment not exceeding sixty (60) days, or both such fine and imprisonment pursuant to Section 125.69(1), Florida Statutes. Each incident of continuing violation and each day of noncompliance shall be considered a separate offense. In addition to the sanctions contained herein, the County may bring an action in the Circuit Court to enforce this Ordinance. The Court in such an action shall have the right to grant such relief as the Court finds necessary to redress injury to persons resulting from a violation of this Ordinance and the County shall take any other appropriate legal action, including but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this Ordinance. It is the purpose of this Ordinance to provide additional cumulative remedies.

~~(1) In addition, the County shall take any other appropriate legal action to ensure compliance with Section 9-36 of this Ordinance, including but not limited to:~~

~~(a) If after due investigation the appropriate enforcement official has reason to believe that a person has been or is violating any of the provisions of this article, then that enforcement official shall cause to be served upon such person a demand to cease and desist, stating the charges and containing a notice of hearing with~~

~~the Consumer Affairs Hearing Board no  
sooner than ten (10) days and not later  
than thirty one (31) days after the  
emergency has been terminated. This  
hearing before the Consumer Affairs  
Hearing Board shall be administered  
pursuant to section 9-14.~~

~~(b) Any other appropriate legal action,  
including but not limited to,  
administrative action and requests for  
temporary and permanent injunctions to  
enforce the provisions of this article.  
It is the purpose of this article to  
provide additional cumulative remedies.~~

#### SECTION 4. REPEAL OF LAWS IN CONFLICT.

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provision of this Ordinance are hereby repealed to the extent of any such conflict.

#### SECTION 5. PENALTY.

Any person convicted of violating any provision of this Ordinance shall be punishable as provided by law.

#### SECTION 6. SAVINGS CLAUSE.

Except as otherwise expressly amended, all other provisions of this Ordinance as originally enacted and amended are specifically preserved and remain in full force and effect.

#### SECTION 7. SEVERABILITY.

If any section, paragraph, sentence, clause, phrase, or



word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this ordinance.

**SECTION 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCE.**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

**SECTION 9. EFFECTIVE DATE.**

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on the 16 day of June, 1998.

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: [Signature]

Chairman

ATTEST:

DOROTHY H. WILKEN, CLERK

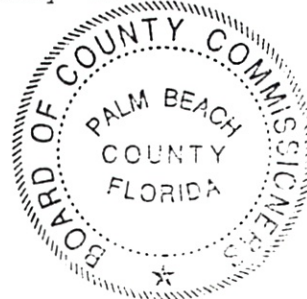
By: [Signature]

Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]

County Attorney



EFFECTIVE DATE: Filed with the Department of State on the 23rd day of June, 1998.

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ORDINANCE NO.

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23

# FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM CODRS CODING FORM

**Instructions:** Florida's Department of State, Bureau of Administrative Code has developed the County Ordinance Data Retrieval System (CODRS) to facilitate the tracking of County ordinances in Florida's 67 Counties. CODRS' data base is composed of over 25,000 county ordinances enacted since 1974.

We request your cooperation in completing this coding form. It is to be completed whenever your county enacts a new ordinance. Simply complete this form and include it with other pertinent ordinance information that is submitted to the Bureau of Administrative Code.

To code this form properly, please refer to the "keyfields" description sheet that has been given to your County Attorney's Office. If you do not have this sheet please contact the Bureau. We will be happy to fax one to you for referencing purposes. Please fill out this form as completely as is possible.

Thank you for your assistance. Should you need further assistance please contact the Bureau of Administrative Code, Department of State at (904)-488-8427 or Suncom 278-8427.

COUNTY: ( <u>Palm Beach</u> )	COUNTY ORDINANCE # ( <u>98-23</u> ) <small>(e.g., 83 - 001)</small>
PRIMARY KEYFIELD DESCRIPTOR: ( <u>Emergency Management</u> )	
SECONDARY KEYFIELD DESCRIPTOR: ( <u>Price Gouging</u> )	
OTHER KEYFIELD DESCRIPTOR: ( _____ )	
ORDINANCE DESCRIPTION: ( <u>Prohibition on Price gouging</u> ) <small>(25 characters maximum including spaces)</small>	
ORDINANCES AMENDED: <small>(List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)</small>	
AMENDMENT # 1: ( <u>92-37</u> );	AMENDMENT # 2: ( _____ )
ORDINANCES REPEALED: <small>(List below the ordinances that are repealed by this legislation.)</small>	
REPEAL # 1: ( _____ );	REPEAL # 3: ( _____ );
REPEAL # 2: ( _____ );	REPEAL # 4: ( _____ );
<small>(Others repealed: list all that apply):</small> _____	

(FOR OFFICE USE ONLY):	COUNTY CODE NUMBER: ( _ _ )
KEYFIELD 1 CODE: ( _____ )	KEYFIELD 2 CODE: ( _____ )
KEYFIELD 3 CODE: ( _____ )	<small>Rev. 8/28/85</small>

ORDINANCE NO. 98 23